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Study on the current state of progress in the implementation of the right to development submitted by Mr. Arjun K. Sengupta, independent expert, pursuant to Commission resolution 1998/72 and General Assembly resolution 53/155

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Introduction

1. As part of the follow-up mechanism to the Declaration on the Right to Development, the Commission on Human Rights, in its resolution 1998/72, decided to appoint an independent expert on the right to development with a mandate to present a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion at each session of the open-ended Working Group set up to monitor and review progress made in the promotion and implementation of the right to development. Subsequently, the General Assembly, in its resolution 53/155 of 9 December 1998, requested the Commission on Human Rights "to invite the independent expert appointed by the Chairman of the Commission on Human Rights to include in his study on the current state of progress in the implementation of the right to development proposals for measures that could be taken for the more effective realization of the right to development at the national and international levels, and to submit his studies to the General Assembly".

2. In the same resolution, the General Assembly also requested the Commission "to invite the follow-up mechanism [which consists of both the open-ended Working Group and the independent expert], inter alia, to consider the question of elaborating a convention on the right to development". This question has not been taken up by the independent expert because the Working Group has yet to consider it in all its implications.

3. The present study is the first in a series that will be prepared by the independent expert in response to both the mandates of the Commission on Human Rights and of the General Assembly. The High Commission reports periodically to the Commission and the Economic and Social Council on the current state of progress in the implementation of the right to development, based on the responses of States to the questionnaires and the reports of the various agencies within the United Nations system (see, for example, E/CN.4/1999/19 and E/1999/96). These are also reviewed systematically by the treaty bodies, particularly by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. These will also have to be considered by the open-ended Working Group in carrying out its function of monitoring and reviewing progress made in the promotion and implementation of the right to development.

4. In its resolution 1998/72 establishing the mandate of the Working Group and that of the independent expert, the Commission also invited the High Commissioner for Human Rights to report to the Working Group on (a) the activities of her office relating to the implementation of the right to development; (b) the implementation of resolutions of the Commission and the General Assembly; and (c) inter-agency coordination within the United Nations system for the implementation of relevant resolutions. These reports should be made available to the independent expert who would, taking into account the deliberations and suggestions of the Working Group, submit a report on the state of progress in the implementation of the right to development as a basis for a focused discussion.

5. Several major developments have taken place in the implementation of this right within the United Nations in recent years. A United Nations Development Assistance Framework (UNDAF) is now expected to formulate the

programmes of assistance of all members of the United Nations Development Group (UNDG). It is expected to operate in collaboration with donor organizations, NGOs and other civil society organizations and take into account the requirements of implementing the right to development. In fact, an ad hoc group has been set up for UNDG to enhance the human rights dimension in development activities. A subgroup is also examining the feasibility and use of selected indicators for monitoring the programme, including for realizing human rights. Attempts are being made, especially by the Committee on Economic, Social and Cultural Rights, to promote implementation of those rights through its general comments. In parallel, outside the United Nations system, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights set the legal basis for seeking reparations for violations of economic, social and cultural rights, extending the earlier Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. The NGO community, which has contributed enormously to strengthening the human rights regime, especially regarding civil and political rights, is now moving enthusiastically to operate at the grass-roots level to deliver economic, social and cultural rights. At the same time, the major donor agencies, the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), the British, Canadian and Swedish and other Scandinavian agencies, have reformulated their development cooperation programmes along the lines of promoting the right to development. It is expected that the High Commissioner's report covering all these subjects would be made available at the first meeting, of the Working Group which would allow the independent expert to examine the issues in the light of the discussion at the first session of the Working Group and to present a detailed, focused report on that question at the second session.

6. Instead of duplicating the efforts of the High Commissioner and reporting on that subject on his own, the independent expert would try to develop a framework for analysing and monitoring the state of implementation of the right to development by all the parties concerned. The Declaration is not a treaty and so would call for a different approach to its monitoring compared to that followed in the case of the two Covenants. On the other hand, because the Declaration has been adopted by the United Nations, it should apply to all countries and all agencies and institutions of the international community. The commitments to its provisions may not be legally binding, but they have the force of consensus and moral legitimacy which is almost equally binding on all. That would imply only a difference in the method of monitoring but not in the importance, coverage and effectiveness of the monitoring itself. The present report, therefore, by elaborating on the measures "that could be taken for the more effective realization of the right to development at the national and international level" as suggested by the General Assembly, and by developing a framework within which the process of implementation could be analysed in concrete terms, would prepare the basis for a focused discussion taking into account the reports of the High Commissioner and the discussions in the Working Group. The results of that exercise will be fully reflected in the second report.

7. The independent expert, who was appointed towards the end of 1998, had a series of meetings with government representatives and agencies as well as NGOs, attended a number of international and regional seminars and presented a brief overview of his approach at the fifty-fifth session of the Commission on

Human Rights in April 1999. Delegations made helpful comments on his presentation, which he later circulated as a note. On 18 and 19 May 1999, at the invitation of the High Commissioner for Human Rights, a group of eminent economists, international lawyers, public personalities and specialists in human rights issues met in Geneva for a brainstorming session, reviewing that note and the related issues. The independent expert has taken into account their deliberations in preparing this report, and will develop them further in the subsequent reports he will submit during his mandate. 1/

8. The present report will consist besides this introductory section, of three additional sections and a concluding section indicating future work. The second section will deal with the present state of the debate on the nature of the right to development and the evolution of an operational framework. The third section will review the content of the right to development and present a view of the process of development from the perspective of implementing the right to development. The fourth section will spell out a programme for concrete implementation of the right to development. The concluding section would attempt to work out a mechanism to monitor and advance this process of implementation.

I. THE RIGHT TO DEVELOPMENT - EVOLUTION OF AN OPERATIONAL FRAMEWORK

9. The adoption by the United Nations in 1986 of the Declaration on the Right to Development was the culmination of a long process of international deliberation on human rights which were perceived from the very beginning as an integrated whole of all civil, political, economic, social and cultural rights. First promoted in the Philadelphia Declaration of the International Labour Conference in 1944, this idea was embodied in the Charter of the United Nations, adopted the following year. After that, the Universal Declaration of Human Rights of 1948 clearly recognized the unity of all those rights and elaborated the theme, as noted later in the preamble to the International Covenant on Civil and Political Rights that, "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights".

10. After the adoption of the Universal Declaration of Human Rights, negotiations were to proceed towards preparing one overall single covenant including all those rights identified in the Universal Declaration, giving them the sanction of an international treaty. However, as the years passed, the post-war solidarity gave way to the cold war and instead of one unified covenant, those rights were codified in 1966 in two international covenants - one on civil and political rights, another on economic, social and cultural rights.

11. However, the international community was not quite satisfied with this split in the field of human rights and the formulation of these two separate instruments. As early as 1968, the Proclamation of Tehran stated: "since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible". In 1969 the Declaration on Social Progress

and Development further emphasized the interdependence of these two sets of rights, and by the early 1970s the concept of the right to development emerged as a human right that unified in itself the civil and political rights as well as the economic, social and cultural rights. Throughout the 1970s, the international community, both in the official agencies and in the non-official bodies of academics and NGOs, repeatedly examined and debated the different aspects of the right to development. In 1979, the Commission on Human Rights, in its resolution 4 (XXXV) of 2 March 1979, expressly recognized the right to development as a human right and asked the Secretary-General to study the conditions required for the effective enjoyment of the right by all peoples and individuals. Subsequently, the various reports, followed by discussions in the Commission and the General Assembly, led to the formulation of the draft declaration on the right to development, which was formally adopted by the General Assembly in December 1986, bringing to a close the split that had occurred earlier. The right to development unifies civil and political rights with economic, social and cultural rights into an indivisible and interdependent set of human rights and fundamental freedoms, to be enjoyed by all human beings, "without distinction as to race, sex, language or religion".

12. The adoption of the Declaration by the United Nations did not of course imply a consensus or the end of all controversy on all the issues related to the right to development. A living document like a constitution, responding to new problems and new issues emerging out of the evolving situations over time, will always be open to interpretations and debates. But the only way to progress is to build upon the areas of agreement and work for larger consensus. When it was adopted in 1986, the Declaration had the overwhelming support of the majority of Governments but was not based on a complete consensus. In the years following, attempts were made to build up that consensus in a number of international conferences and negotiations, culminating in the World Conference on Human Rights held at Vienna in 1993. A political consensus was achieved at Vienna when, in the Vienna Declaration and Programme of Action, the right to development was recognized as a universal and inalienable right and an integral part of the fundamental rights of the human person. This consensus was strengthened by the Rio Declaration on Environment and Development, the Cairo Declaration of the International Conference on Population and Development, the Copenhagen Declaration of the World Summit for Social Development and the Platform for Action of the Fourth World Conference on Women held at Beijing.

13. As a result of this consensus, there is now no more room for promoting one set of rights as against another, or putting forward some rights, such as economic and social, to be fulfilled prior to or in violation of civil and political rights, or vice versa. They have to be fulfilled together and the violation of one would be as offensive as that of another. The international community, instead, moved on to the examination of the question of implementation of those rights as a part of the right to development. Ensuring the realization of the right to development has become a major concern of the member Governments since the adoption of the Declaration.

14. After 1993, the process was intensified through the establishment of a working group of experts to identify the obstacles to the implementation of the right to development and to recommend ways and means to the realization of that right. There was a first working group of experts, nominated by

Governments, appointed in 1993 with a three-year mandate, which met five times, producing a comprehensive but not a consensus report. There was a second working group, appointed in 1996 for a two-year period, which proposed a global strategy involving efforts of the United Nations and its agencies, States parties and civil society.

15. The recommendations of the working group are available and should be considered in due course by the open-ended Working Group of the Commission. The independent expert has examined these recommendations carefully and has tried to build upon them his approach towards a programme for realizing the right to development. Because his approach is much more focused and concentrated on a number of specific steps, the independent expert feels that the measures recommended by the second working group would in most cases be complementary to his proposed programme. In particular, the recommendations (see E/CN.4/1998/29) regarding States, which should be "encouraged to consider legislative and constitutional changes (when their legal system so permits) which are designed to guarantee that treaty law takes precedence over internal law and that treaty provisions are directly applicable in the internal legal order", or that "States should take measures to ensure that poor and vulnerable groups, including landless farmers, indigenous people and the unemployed, have access to productive assets such as land, credit and means for self-employment", or that "in areas where conflicts of any types have occurred or are occurring, States should ensure that the population living in the affected areas is able to retain the right to their property and legally acquired rights", would be very relevant for the programme suggested in this paper. Similarly, the recommendation regarding the civil society and non-governmental organizations, encouraging their greater participation, especially of those groups that represent the vulnerable sections, such as the poor, the homeless and the unemployed, and the public interest (e.g. consumer, environmental, human rights and women's organizations), in the local and national decision-making, would be equally important. The recommendations regarding the United Nations system and international organizations (e.g. that the High Commissioner for Human Rights should pursue dialogue with the World Bank, the International Monetary Fund (IMF) and other financial institutions, with a view to their incorporating the principles of the right to development into their policies, programmes and projects) would also be quite germane to this report.

16. In working out the programme for the realization of the right to development, it would be necessary for the independent expert to spell out a framework, in the light of which the document of the Declaration could be operationalized. Towards that end, the independent expert will build upon the broad agreements that have been already achieved in international organizations and public discussions and will be concerned only with the elements of the Declaration which are relevant for his proposals. He does not intend to get into the legal, philosophical and political debates and controversies surrounding the Declaration on the Right to Development, beyond what is necessary for his purpose.

The right to development is a human right

17. There has been a considerable debate around the question whether the right to development can be regarded as a human right. This issue, for us,

can now be taken as settled, after the achievement of the consensus for the Vienna Declaration and Programme of Action in 1993, which reaffirmed "the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights". Elsewhere in the same document is stated: "the universal nature of these human rights and freedoms is beyond question".

18. In the ultimate analysis, human rights are those rights which are given by people to themselves. They are not granted by any authority, nor are they derived from some overriding natural or divine principle. They are human rights because they are recognized as such by a community of people, flowing from their own conception of human dignity, in which these rights are supposed to be inherent. Once they are accepted through a process of consensus-building, they become binding at least on those who are party to that process of acceptance. 2/

19. Over the years in the past, various views have been expressed on the source and the nature of human rights - for example, whether they are culture-relative or universal, whether they are rights of individuals as persons or as members of a group or a community. After the Vienna Declaration and Programme of Action, it should be quite legitimate for us to say that these debates in no way detract from the fact that the adoption of the Vienna Declaration and Programme of Action by all States represented by their Governments obliges all Governments to treat the right to development as a human right in all their dealings and transactions.

20. For our purpose the recognition of the right to development as an inalienable human right is to confer on its implementation a claim on national and international resources and to oblige States and other agencies of society, including individuals, to implement that right. Human rights are the fundamental basis on which other rights, created by the legal and political systems, are built. The responsibility of States, nationally and internationally, as well as other organs of the civil society to help realize these rights with utmost priority becomes unquestionable. The Vienna Declaration and Programme of Action, in fact, states that categorically. "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments." It goes on to state that "enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations".

Justiciability

21. Another element of controversy regarding the right to development is its justiciability. There is a view, particularly among lawyers, of the positivist school, that if certain rights are not legally enforceable, they cannot be regarded as human rights. At best they can be regarded as social aspirations or statements of objectives. This view, however, confuses human rights with legal rights. Human rights precede law and are derived not from law but from the concept of human dignity. There is nothing in principle to prevent a right being an internationally recognized human right even if it is not individually justified. 3/

22. The two International Covenants on Human Rights gave legal force to the obligation to respect civil and political rights as well as economic, social and cultural rights. Mechanisms have been established to review and monitor State compliance, and under the Optional Protocol to the International Covenant on Civil and Political Rights, individuals may bring a complaint to enforce their human rights. However, the absence of an individual complaints mechanism under the International Covenant on Economic, Social and Cultural Rights in no way prevents the rights recognized by the Covenant from being human rights. Furthermore, a number of economic and social rights (such as labour rights) are already protected in national law and are justiciable before national courts.

23. Civil and political rights and economic, social and cultural rights have been codified in the International Covenants and ratified by a large number of countries, but the Declaration on the Right to Development does not have the status of a treaty and therefore cannot be enforced in a legal system. That still does not detract from the responsibility of States, nationally or internationally, as well as of other individuals and agencies of the international community to realize the right to development recognized as a human right. It may be necessary to suggest some mechanism to monitor or exercise surveillance over the States and the agencies of the international community to ensure that they are complying with their commitment to realize the right to development. That mechanism might not have the same legal status as a treaty body but may still be effective in ensuring the realization of this right through peer pressure, democratic persuasion and the commitment of the civil society.

Resource constraints

24. A related issue is the question of resources - financial, physical and institutional, both at the national and the international level - which would put a constraint on the speed and the coverage of the realization of the right to development and of the individual rights recognized in the two Covenants. There was earlier a view that civil and political rights had a greater claim to being regarded as human rights, because they could be protected immediately by law, mainly through proscriptive and enforceable legislation. The economic, social and cultural rights, on the other hand, required to be protected through positive action over time, which would consume resources, and since resources were always limited, the realization of these rights would naturally be constrained. According to this view, if certain rights cannot be fully realized and protected within a limited time, they cannot be regarded as inalienable and indefensible human rights. This argument, however, does not hold because many of the civil and political rights turn out to require as much positive action as economic and social rights, thereby consuming as much resources.

25. Indeed, the existence of the rights should not depend on the methods of realizing them, but should, once they are recognized as human rights, guide the determination of the methods of their realization depending upon the objective conditions in the States parties, including the availability of resources, and the international environment. The realization of these rights does require expenditure of resources, especially if the implementation requires programmes of positive action to be taken over a period of time.

These resources, whether they are financial, physical, human or institutional, are not unlimited at any point in time, and they have to be allocated among many alternative and competing uses.

26. The human rights instruments recognize the importance of the resource constraints quite explicitly. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights states: "Each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". Article 10 of the Declaration on the Right to Development states that "steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels".

27. International lawyers and human rights agencies have been debating the implication of such resource constraints and the Limburg Principles, formulated at the University of Limburg (Maastricht, The Netherlands), by a group of distinguished experts in international law, laid down the principles of dealing with them. The Principles stated, inter alia, that "... the obligation to achieve progressively the full realization of the rights requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant". Further: "Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized ...." Similarly: "The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available". The Principles define the term, "its available resources" as referring to "both the resources within a State and those available from the international community through international cooperation and assistance". "In determining whether adequate measures have been taken for the realization of the rights", the Principles reiterate, "attention shall be paid to equitable and effective use of and access to the available resources".

28. The approach in all these has been based on the principle that all States parties must make "the best endeavour" to fulfil their obligations and that the monitoring mechanisms of the treaty bodies would have the jurisdiction to examine and pronounce on whether that best endeavour has been exercised. Included in that process are those measures that can be adopted immediately and without much expenditure of resources, such as prohibiting discrimination in the access to available services and benefits and adopting legislation and administrative measures to fulfil or to redress the violation of the obligations. If all States parties follow the Limburg Principles, it would go a long way towards the realization of economic, social and cultural rights which, together with civil and political rights, form an essential basis for the right to development.

29. There would still remain the issue of prioritization, which cannot be ignored if the realization of these rights require expenditure of resources, the supply of which remains limited. The problem should not of course be blown out of proportion or used as a pretext for avoiding action. Many of the activities needed to fulfil these rights do not need many financial resources. They may require more input of administrative or organizational resources whose supplies are relatively elastic, depending upon political will rather than on finance or physical infrastructure. Similarly, the resources requested may not be limited to national availability but also can be complemented by international supply, both of an appropriate quantity and quality. As a result, for many countries to make real progress towards the realization of the right to development, the resource constraints may not be binding or insurmountable. A better way of using the existing resources, i.e. more efficiently and less wastefully, may have a much greater impact on realizing the rights than increasing the supply of resources.

30. The resource constraints affect different countries differently. For the very poor countries the institutional constraints may be so important that unless they are removed little can be done to use financial and other resources efficiently to realize the rights. For several other developing countries, it may be the fiscal resources of the Government rather than the overall savings that are more crucial. For many others, the infrastructure services, like roads, communication, transportation, electricity or water supply, may turn out to be the binding constraints. If all rights are of equal value or have the same importance - as it is claimed in the human rights instruments - it is the nature of the resource constraints that may determine the priorities. Those rights that require the least expenditures of the resources which are most binding or in short supply will tend to be realized first. There is a risk that this may, as a result, fail to bring about the social change that is the ultimate objective of following the rights approach to development. For example, if providing primary education to any poor child is equally important, whether the child lives in a remote village or in an urban area, in a country with limited road connectivity or transport facilities, the children in the remote village could be ignored. If providing food to poor families in all parts of the country is given equal value in a financially expensive programme of food security, the female children in backward villages may continue to be deprived, if social reforms are not pursued effectively.

31. One of the benefits of using a human rights approach to development is that it focuses attention on those who lag behind others in enjoying their rights, and requires that positive action be taken on their behalf. In the human rights literature, this is often dealt with in terms of favouring the poorest or the most vulnerable groups of the society. In theory, this would be the application of the Rawlsian Difference Principles that require maximizing the advantage of the worst-off, no matter how that affects the advantages of all others. 4/

32. Although this is not clearly stated in human rights instruments as an abiding principle, the motivation of the human rights approach to development guides one along the lines of protecting the worst-off, the poorest and the

most vulnerable. However, if a choice has to be made between the different objectives, it has to be made through a democratic process, through discussion, persuasion and social choice. It is following that democratic process whilst simultaneously pursuing the universal principle of justice, which is so important in making such decisions in a particular context.

International cooperation

33. As mentioned above, in most situations of realizing human rights in a particular country, there is so much waste and inefficient use of domestic resources that substantial progress can be made in improving the realization of most human rights even within the existing resources, which can be augmented by international cooperation for which a call has been given explicitly in the Declaration on the Right to Development. It may therefore be appropriate to call for action on all the rights enumerated in the human rights instruments, instead of focusing only on a few of them. However, in working out a programme of action based on international cooperation, it may be useful to choose a few areas which have a universal applicability and for which an adequate supply of international resources may be available. Given the fact that the transfer of resources from the industrial to the developing countries has almost reached a plateau in recent years and that there does not seem to be much chance of its being increased, however much desirable that might be, it would be necessary to concentrate on a few areas which can be effectively developed within that constraint of international resources.

34. The programme that the independent expert is proposing in this paper would be based on international cooperation, in the form of a compact between the donor countries of the OECD, the financial institutions and the concerned developing countries, to realize three basic rights - the right to food, the right to primary health care and the right to primary education - within a specified time period. These three rights have been chosen because they are closely related to the right to life - the most basic of all human rights. Food is essential for survival; primary health care is indispensable as a minimum requirement for living without illness, at least in the early years; and primary education is necessary for the mental development of a young person to be able to grow up as a full individual. The choice has also been influenced by the fact that several international organizations have been working in these areas with action plans which may be more easily built up into a feasible, global human rights programme.

35. The independent expert is fully aware that several other areas of human rights could be chosen by the international community as being of equal importance. In fact, there is no way of choosing a few among them in preference to others except through discussions and deliberations in the international forums, spelling out the implications of the choice and their feasibility within the possible supply of national and international resources. The only point the independent expert would like to make is that, at least to begin with, the choice should be limited to a minimum of a few areas and to attempt to make a success of the programme, which can then be extended to other areas with equal success.

II. THE RIGHT TO DEVELOPMENT AS THE RIGHT TO A PROCESS OF DEVELOPMENT

A. Review of the content of the right to development

36. The text of the Declaration on the Right to Development provides the main elements of the rights approach to development. The first article, which is a declaratory statement, lays the groundwork for the rest of the Declaration, by establishing the assumption on which it is based. It states: "The right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized".

37. First, there is a human right that is called the right to development, and this right is inalienable, meaning it cannot be bargained away. Then, there is a process of "economic, social, cultural and political development", which is recognized as one in which "all human rights and fundamental freedoms can be fully realized". The right to development is that human right, by virtue of which "every human person and all peoples" are entitled to "participate in, contribute to and enjoy" that process of development. Subsequent articles elaborate these principles and clarify the nature of this right to development.

38. For example, article 1 recognizes that not only "every human person", but also "all peoples", are entitled to the right to development. Article 1, paragraph 2, explicitly recognizes the right of peoples to self-determination. Article 2, paragraph 1, categorically states that it is "the human person" who is the central subject of development, in the sense of being the "active participant and beneficiary of the right to development". Even if "peoples" as collectives of "human persons" are entitled to some rights, such as full sovereignty over their natural wealth and resources, the human person must be the active participant and beneficiary of that right.

39. The process of development, "in which all human rights and fundamental freedoms can be fully realized", has been elaborated in several articles as objectives of development policies or measures to realize the right to development. For example, according to article 2, paragraph 3, such a development process would be "the constant improvement of the well-being of the entire population and of all individuals, on the basis of their actions, free and meaningful participation in development and the fair distribution of the benefits resulting therefrom." Article 8 states more specifically that realizing the right to development would ensure "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income", and "that women should have an active role in the development process" as well as "appropriate economic and social reforms", "eradicating all social injustices".

40. To realize this process of development, to which every human person is entitled by virtue of the right to development, there are responsibilities to be borne by all the concerned parties: the human persons, States, operating nationally and States operating internationally. According to article 2, paragraph 2, "all human beings [persons] have a responsibility for development, individually and collectively"; they must take appropriate

actions, maintaining "full respect for their human rights and fundamental freedoms as well as their duties to the community". Human persons are thus recognized to function both individually and as members of collectives or communities and to have duties to communities that are necessary to be carried out in promoting the process of development.

41. States, according to article 3, have "the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development". This responsibility is complementary to the individuals' responsibility mentioned above and is just for the creation of conditions for realizing, not for actually realizing the right to development. Only the individuals themselves can do this. The actions of States needed for creating such conditions are elaborated in the different articles in terms of both national and international operations. At the national level, article 2, paragraph 3, points out that "States have the right and the duty to formulate appropriate national development policies" and article 8 says that "States should undertake ... all necessary measures for the realization of the right to development" and again "should encourage popular participation in all spheres". In addition, States are required, by article 6, paragraph 3, to take steps "to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights," because the implementation, promotion and protection of these rights would be essential for realizing the right to development, as "all human rights and fundamental freedoms are indivisible and interdependent" (art. 6, para. 2). Furthermore, States are expected to take "resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, ... racial discrimination, colonialism, foreign domination ..." (art. 5).

42. On the obligation of States, operating at the international level, the Declaration is forthright in emphasizing the crucial importance of international cooperation. According to article 3, paragraph 3, "States have the duty 'to cooperate with each other in ensuring development and eliminating obstacles to development ... and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest' ...." This is reiterated in article 6, which states that "all States should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms", which are essential ingredients, as observed in article 1 of the Declaration. Article 7 in particular talks about all States promoting international peace and security and complete disarmament, ensuring that resources released thereby are used for comprehensive development, in particular of developing countries.

43. Most importantly, article 4 declares quite categorically that States have the duty, individually and collectively, to formulate international development policies to facilitate the realization of the right to development. It recognizes that sustained action is required to promote rapid development of developing countries, and then declares: "as a complement to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development". To appreciate fully the emphasis

the Declaration puts on international cooperation, article 4 should be read in conjunction with the opening sentence of the preamble to the Declaration which refers to "the purposes and principles of the Charter of the United Nations relating to the achievement of international cooperation in solving international problems of an economic, social, cultural and humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms". That reference is to Article 1 of the Charter, and the case for international cooperation could be further strengthened by referring to Articles 55 and 56 of the Charter by which Member States pledge themselves to take joint and separate actions to promote "(a) high standards of living, full enjoyment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion", and then declare that all Members of the United Nations "pledge themselves to take joint and separate action in cooperation with the Organization" for the achievement of these purposes. Because the Charter has a special status as the foundation of the present international system, this pledge is a commitment to international cooperation by all States within the United Nations.

44. The Vienna Declaration and Programme of Action reaffirms the solemn commitment of all States to fulfil their obligations in accordance with the Charter of the United Nations (para. I.1), that States should cooperate with each other in ensuring development and eliminating obstacles to development, and that the international community should promote effective international cooperation for the realization of the right to development (para. I.10); that progress towards the implementation of the right to development requires effective development policies at the national level, equitable economic relations and a favourable economic environment at the international level (ibid.); and that the international community should make all efforts to alleviate specific problems, such as the external debt burden of developing countries, to supplement the efforts of the Governments of those countries.

45. In the light of the above discussion and textual analysis of the Declaration, the essential elements of the right to development can thus be summed up as follows: the right to development is the right to a process of development in which all human rights and fundamental freedoms can be fully realized (art. 1), and which has to be exercised in a manner that ensures that:

(a) The individuals concerned would effectively participate, fully and meaningfully, at all stages of decision-making (arts. 1, 2 (3) and 8);

(b) Individuals would have equal opportunity of access to resources (art. 8);

(c) They would be entitled to a fair distribution of the benefits of development and of income (arts. 2 and 8);

(d) States would carry out their responsibilities to enable that process of development to materialize through appropriate national and international development policy (arts. 3 and 4);

(e) There would be international cooperation among States (and international agencies) to facilitate the realization of the right to development; and finally and most importantly,

(f) All such activities will be carried out while maintaining full respect for civil and political as well as economic, social and cultural rights (preamble, arts. 6 and 9).

46. The importance of the last element derives from the fact that the right to development is a human right, and as such it is interdependent and indivisible with other civil, political, economic, social and cultural rights, in the sense that the denial of any one of these rights would tend to deny the right to development itself. So, a programme for realizing the right to development must be built on ensuring the protection of all these rights. The programme that the independent expert proposes in this paper is built upon the ideas of the Vienna Declaration and Programme of Action and measures of international cooperation supplementing the efforts of national Governments to promote development in a manner that is consistent with the right to development, as enunciated above and elaborated in the Declaration on the Right to Development.

B. The process of development

47. The nature of the process of development to which every human person and all peoples are entitled as the right to development has been identified in the Declaration as one in which all human rights and fundamental freedoms can be fully realized. It is basically centred around the concept of equity and justice, with the majority of the population who are currently poor and deprived to be brought upwards in their living standards and capacity to improve their position. It also implies that the well-being of "the entire population" is to be improved. The concept of well-being in that context extends well beyond the conventional notions of economic growth to the expansion of opportunities and capabilities to enjoy those opportunities.

48. On the face of it, this approach is contrary to the usual approach to economic development which for many years was preoccupied with the growth of output of material products and marketable services. The industrial countries, which have had centuries of history of economic growth, developed through a process of capital accumulation and did not have, at least in the initial phases of industrialization, an impressive record of equity and justice. After the Second World War, they succeeded in reconstructing their war-ravaged production structures, first with large resource transfers under the Marshall Plan, and then through the expansion of trade and payment arrangements among themselves. The developing countries, lagging far behind the industrial countries in technological and physical capacities, were expected to follow the same path of pursuing accumulation of wealth and production capacities through the growth of gross national product (GNP) and expansion of trade and payments.

49. The international community was of course quite conscious that the developing countries as a group were handicapped by the initial conditions of underdevelopment in capacities, skills, technology and accumulated capital. It provided substantial assistance to the developing countries through bilateral and multilateral resource transfers, balance-of-payments support from the IMF and long-term investment finance from the World Bank. But development policies were dominated by consideration of maximizing the growth of GNP, increased industrial product and improved technology and aggregate consumption. The notions of equity, justice, participation and freedom were peripheral and were raised only as afterthoughts in the approach to national and international development policies. Yet, it is these very notions that comprise the value added by the concept of the right to development.

50. There has of course always been a sector of academic economists, even from the time of Adam Smith and the classical economists to this recent period, who thought that the idea of development went far beyond just growth in output and material wealth, to include welfare, equity, or at least improving the lots of the poor or giving people a wider range of choice. But most of them were persuaded to accept the principle of maximizing the per capita gross domestic product (GDP) as the basis of their strategies for development, rather than reorient the whole approach according to concerns with equity and justice.

51. A good example of that would be W.A. Lewis, the Nobel laureate who in his The Theory of Economic Growth agrees that the objective of development is increasing the range of human choice, but decides to concentrate his analysis on the growth of output per head because that "gives man greater control over his environment, and thereby increases his freedom". 5/ The growth of GDP becomes both the objective and the instrument of development.

52. There were many economists and policy makers who were also influenced by the Kuznets thesis that income growth and income equality are negatively related, so that policies to increase equality may actually lead to reduced growth. Even those who did not subscribe to this thesis - and later empirical research has actually failed to substantiate that thesis on the basis of experiences of developing countries - would not always plead for reorienting the whole substance of the development process based on considerations of equity. They would talk about policies that maximized the growth of GDP and then adopting some redistribution measures to improve the lots of the poorest and the worst-off. This point is illustrated by the famous "minimum needs approach" in which the international agencies tried to help the developing countries to supply the poor with the provisions that met their minimum needs.

53. The right to development, or the right to the process of development, which all human rights and fundamental freedoms can be realized is proposing a qualitatively different approach, where considerations of equity and justice are primary determinants of development and the whole structure of development is shaped by these determinants. For example, if poverty has to be reduced, if the poor have to be empowered, or if the poorest regions have to be uplifted, the structure of production has to be adjusted to produce these outcomes through development policy. The aim of policy should be to achieve this with the minimum impact on other objectives, such as the overall growth

of output. But if there is a trade-off, such that the growth will be less than the feasible maximum, in order to satisfy the concerns of equity, it will have to be accepted. If this development process has to be participatory, the decisions have to be taken with the full involvement of the beneficiaries, keeping in mind that if that involves a delay in the process, that delay should be minimized. If a group of destitute or deprived people have to have a minimum standard of well-being, a simple transfer of income through doles or subsidies may not be the right policy, and they may have to be provided with the opportunity to work or to be self-employed, which may require generating activities that a simple reliance on market processes may not be able to ensure.

54. The rights approach to development requires us to re-examine the ends and means of development. If the improvement of the well-being of the people is the objective of development, economic growth consisting of the accumulation of wealth and the growth of gross national product would not be an end in itself. It can be one of the ends, and can also be a means to some other ends, when "well-being" is equivalent to the realization of human rights. A prosperous community of slaves who do not have civil and political rights will not be regarded as a society with well-being. Education, learning and skill formation may make a person more productive, generating more income to satisfy more wants, and thereby become a means to the end of economic growth. But education also expands the capability in reading, communicating, arguing and leading a full life.

55. In order to capture these nuances and have much more useful categorization of the variables in making development policy, Amartya Sen, who received the Nobel prize for Economics in 1998, approached this problem almost entirely from the point of view of the right to development. According to Mr. Sen, development is best seen as a process of expanding substantive freedoms that people enjoy. 6/ Growth of GNP, or industrialization, or technological advances are very important as means to expanding freedoms that people enjoy. But these freedoms depend also on other determinants, such as social and economic arrangements, education, provision of health care, social security, as well as political and civil rights, the liberty to participate in public discussion and in development activity. Substantive freedoms are constituent components of development, but they are also instruments of development. Free agency of the people, when they enjoy civil and political rights promoting development through participation, is essential for that process. The concept of development as freedom thus fully integrates human rights with the right to development.

56. Closely related to this is the concept of capability, which Sen and many other economists have extensively dealt with and operationalized. 7/ The freedom to achieve valuable functionings is called "capability" and "functionings" are defined as things that we value doing or being, such as being in good health, being literate or educated, being able to participate in the life of the community, being free to speak, being free to associate, and so on. In that sense development becomes the expansion of the capabilities of persons to lead the kind of lives they value. Public policies, national or international, can expand the capabilities and participatory capabilities used effectively by the public can influence the formulation of the public policies

themselves. Therefore, in determining the public policies which would realize the right to development, it would be useful to focus on the capabilities and their enhancement in specific sectors.

III. A PROGRAMME FOR REALIZING THE RIGHT TO DEVELOPMENT

57. The following paragraphs propose an approach to the implementation of the right to development that can be debated meaningfully in international forums and among academics, experts, international institutions and non-governmental agencies - not just individually, but through meetings, seminars and conferences. The aim of the independent expert is to initiate a process of international confidence-building around the methods of realizing the right to development.

58. The right to development can be implemented mainly by collective action. That right incorporates personal rights which, according to the noted Canadian philosopher, Charles Taylor, concentrate on "the individual's ability to determine the way society behaves towards him" such as the right to life and the freedoms of speech, of association, of opinion and of religion. But it goes beyond to include rights that could be secured only through positive action by the State, or actions by civil society groups complementing the actions of the State. Those are like the "solidarity rights" of Karel Vasak or what Charles Taylor described as "fundamental social objectives". 8/ The elements of personal rights can be implemented in the traditional way by the States parties carrying out their obligations towards the individual. But the elements of solidarity rights related to the economic, social and cultural aspects of the right to development have to be implemented through appropriate designs of social actions. Such actions would consist of the positive actions of the State and of non-State public activist groups, but would also have to be complemented by international action by other States and international institutions, particularly because in a globalized world national actions are constrained by the international environment.

59. Economic policies of a country in a globalized world can no longer be set in isolation from international interactions and even for a single country there are many policy options that can affect different sections of people differently. Making the right to development a human right recognized by all Governments, enjoins them to follow a code of conduct that not only restrains them from disrupting the conditions required to fulfil that right but also actively assists and promotes its fulfilment. As it is a human right, it pertains to every individual as a human being irrespective of nationality, country or continent, and the obligations of a State extend beyond its boundaries to helping, through positive action, the citizens of all other States. The obligations of the State to its own citizens are of course paramount because a citizen's mode of living vitally depends upon the actions of the State. But no State can ignore the impact of its actions on the citizens of other States. Consequently, every State having recognized the right to development is obliged to ensure that its policies and actions do not impede enjoyment of that right in other countries and to take positive action to help the citizens of other States to realize that right. So long as the rights relating to the right to development are not codified in a covenant

such obligations may not have the sanction of international law. But a voluntary acceptance of the Declaration implies acceptance of the moral obligations which in any case are the basis of a legal system.

60. The effective implementation of the right to development still has a long way to go, but that is so not because it has not been incorporated in a treaty or covenant. Civil rights and political rights took a long time even after their formulation and acceptance by many Governments to be incorporated in the national and international laws and to be made justiciable and enforceable. Even today their implementation is not always universal and comprehensive. Similarly, it will take quite some time before the right to development is honoured universally and comprehensively. But the process has begun. It has to evolve through resolution of conflicts between national and international interest groups which have to be achieved through collective action, mutual cooperation and coalition-formation. Until procedures are worked out to resolve these conflicts, so that the different interest groups have an incentive to honour these rights, the mere rhetoric of acceptance or even being encoded as law is no guarantee that the Declaration will be implemented.

International cooperation for realizing the right to development

61. The need for international cooperation, or the obligation of States to cooperate with each other for realizing the right to development, has been, as we have noted, duly recognized. One of the instruments of international economic cooperation has been official development assistance (ODA) or foreign aid, but that is just one of several methods that can be used by the members of the international community to cooperate with each other. Providing access to markets through trade liberalization, providing incentives to increase investment flows and transfer of technology, providing bilateral and multilateral assistance to implement structural adjustments and economic reforms and debt forgiveness, and assisting countries to meet financial crises and other emergencies are some of the different ways the members of the international community have cooperated effectively with each other.

62. It would be important to ensure that in all these methods of cooperation, the different rights included in the right to development are fully protected. As we have noted, the report of the Intergovernmental Group of Experts on the Right to Development states: "The High Commissioner for Human Rights should pursue dialogue with the World Bank, the International Monetary Fund and other financial institutions with a view to their incorporating the principles of the right to development in their policies, programmes and projects" (E/CN.4/1998/29, para. 40). The Working Group goes on to recommend, "in particular, the High Commissioner should stress that in their activities and subprogrammes, the international financial institutions should give the highest priority to an action-oriented approach to the right to development in its multidimensional aspects". The independent expert endorses this recommendation fully and would add to the list of institutions with which the High Commissioner should interact, the name of the Development Assistance Committee of the OECD, representing the bilateral donors, and would recommend the establishment of a mechanism or a forum for consultations between the High Commissioner for Human Rights and these agencies.

63. Development assistance or foreign aid would, however, remain the most important instrument of international cooperation, because it can be used at the discretion of the authorities in pursuit of policies. Therefore, it would be desirable if the volume of foreign aid would increase. It is useful to remind ourselves of the voluntary, albeit morally binding, commitment of the individual countries to provide 0.7 per cent of GDP as foreign aid, and we urge those countries who have failed to meet their commitments to fulfil them. In the last few years the volume of aid has remained stagnant and for a few major countries it has come down. But there has been a phenomenal increase in international private and non-concessional capital flows from these countries. It would be useful to examine if aid that is available in limited quantity can be used to leverage large sums of private flows to be channelled especially to those countries which are bypassed by private capital but which require them the most to impact on the right to development. 9/

64. However, the volume of resource transfers is not as important as the use that is made of the resources. The donors have a legitimate concern about the effectiveness of the resources they provide to the developing countries in furthering the objectives of development. Conditionalities, when they are imposed without the willing consent of the recipients, would go against the spirit of the rights approach to development. But if they are part of an understanding and are perceived as a "compact" based on mutual commitment to fulfilling conditions for implementing programmes, they can become an effective instrument for realizing the right to development.

The development compact

65. The idea of a "compact" was first floated by the Norwegian Foreign Minister, T. Stoltenberg, in the late 1980s and was elaborated upon by other development economists and in the Human Development Reports. It was meant to support programmes which the developing countries were supposed to implement according to a sequenced design of policies with a clear commitment by donors to provide the required assistance in terms both of finance and trade access and other policies to match the efforts of the recipient countries. 10/

66. It would be useful to invoke the concept of a development compact once again in working out programmes for implementing the right to development. It does not have to detract from existing arrangements and use of resources for ongoing programmes. But the international community might like to decide to adopt a few specific international programmes to begin implementing the right to development as compacts between developed and developing countries which would take on the obligations of following policies and procedures mutually agreed upon and of providing required financial and other assistance as identified. As long as implementing these programmes does not worsen the achievement of other programmes or objectives, there will be definite progress towards realizing the right to development.

A step-by-step approach

67. The process of development, through which the right to development is realized, has to proceed step by step, in tandem with the growth of both the international and the national economies, and also of the strength of the

human rights movements. The concept of development as freedom is, as we have noted, much broader than adequate income or consumption standards. It is a "vector", consisting of a large number of elements such as income, employment, health, education or opportunities in general which include all forms of freedoms. An increase in any one element of the vector, such as per capita income or employment, does not automatically raise the level of other elements, such as health, nutrition, longevity or education. But a higher level of per capita income or employment facilitates improvement in the other elements, if appropriate policies are taken. This is, however, true of other elements also: a higher level of education or health improves productivity and facilitates increase in per capita income or employment, provided the right complementary policies are adopted.

68. So any programme that raises the level of any of the elements of the vector of development without lowering the level of any other element would increase the level of development. That approach in this context would essentially mean not violating other rights, such as civil and political rights, and respecting the principles of transparency, accountability, equity and participation, which is the way, as mentioned above, of exercising the right to development. In this manner it should be possible to build up a movement, both nationally and internationally, to realize the right to development as a human right.

International compact to implement the rights to food, primary health care and primary education

69. For example, we may start with the identification of a few well-defined rights such as the right to food, the right to primary health care and the right to primary education, as the minimum indicators of the right to development which have to be satisfied. There may have to be an international agreement either as a new covenant or as a part of the existing covenant or protocol, making these three rights "non-derogable" among all the rights. 11/ Essentially, these three rights are complementary to the non-derogable right to life, which is the foundation of all rights and the violation of which attracts sanctions and reprimand not only from the national States but also from all other States and the international community. All the signatories to the agreement must take on the obligation not only to fulfil these rights for citizens of their own State, but also to provide the necessary assistance and create the necessary condition for their fulfilment in other States.

70. These rights would claim the priority in the use of the States' financial and administrative resources. An individual should be able to claim the fulfilment of these rights as obligations of States. The international community and the Governments of developed countries must get together and devise ways to help the Governments of developing countries to implement these rights, as determined by the international community, just as they do in implementing civil and political rights. Although these obligations are voluntary and consensual, once accepted, they have to be implemented.

71. All three rights, the right to food, the right to primary education and the right to primary health care - are part of the International Covenant on Economic Social and Cultural Rights, article 11 (1) of which recognizes the

right of everyone to an adequate standard of living, including adequate food, and article 11 (2) of which enjoins the States parties to take the necessary steps, individually and through international cooperation, to improve the production, conservation and distribution of food, recognizing "the fundamental right of everyone to be free from hunger". Article 13 recognizes "the right of everyone to education", and with a view to achieving the full realization of this right, "primary education shall be compulsory and available free to all". Article 14 requires each State party which has not been able to secure compulsory primary education free of charge, to undertake within two years to work out and adopt a detailed plan of action for the progressive implementation of such education within a reasonable period. The right to primary health care is included in the recognition, in article 12 (1), of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. To achieve this right, according to article 12 (2), States parties must provide, inter alia, for the reduction of the stillbirth and infant mortality rates, the prevention and control of epidemics and the provision of medical services. Primary health care would consist of only a part of these provisions, and has been identified by the WHO primary health care strategy as consisting of maternal and child health care, family planning, immunization, treatment of common diseases, essential drugs, safe water and sanitation. To these may be added access to trained personnel, with regular supply of 20 essential drugs, within one hour's travel.

72. Article 2 of the International Covenant on Economic, Social and Cultural Rights lays down the general principle for the realization of these rights by States parties through all appropriate means, particularly the adoption of legislative measures, using available resources to the maximum, and through international assistance and cooperation. Most importantly, as constituent components of human rights, these rights have to be achieved following the human rights approach, with full respect for civil and political rights and, with the effective participation of all concerned, equal opportunity of access and fair distribution of the benefits of development.

73. It would then be necessary to work out the arrangements to be entered into by the Governments of developing countries that accept the requirements of the compact with the international community, represented by the donors and the international financial institutions. These arrangements would require planning of appropriate policies, phasing of the activities and the expenditures, and provision and distribution of the facilities at the national and international levels, meticulously following the human rights approach. There has to be transparency and accountability with decentralized decision-making, with the full and effective participation of all the beneficiaries. There has to be equal opportunity of access to resources and a fair distribution of the benefits and full respect for human rights. There will also have to be an assessment of the cost of these programmes and how much of it can be mobilized by the State itself. In making such assessments, not only will the Governments' capacities to mobilize resources be examined, but the other requirements will also have to be reviewed. On that basis, the requirements of international cooperation, providing financial resources, as well as technical assistance, market access and provision of other facilities, will need to be worked out.

74. The process of working out these arrangements will have to be fully satisfactory and democratic. The Governments concerned should be able to negotiate on an equal footing with the representatives of the donors and the World Bank, which have the expertise in running projects in such countries; the IMF, which is involved in assessing its capacities to mobilize resources, and the specialized agencies - such as FAO, WHO and UNICEF - which are familiar with the requirements of implementing projects in the areas of food supply, primary health care and primary education. Once the arrangements are worked out for implementing the programmes in the areas of the right to food, the right to primary health care and the right to primary education, there will be an agreement about what the States would be expected to do in pursuance of the right to development, in clearly determined phases. The representatives of the international community would then enter into an assurance that they would provide the resources and other means of international cooperation, as determined in the assessment of the requirements for the arrangements. The compact is essentially the acceptance of a mutual obligation. If the developing countries concerned follow fully the obligations of realizing these rights, in accordance with the arrangements worked out with their full participation, the international community, the donors and the financial institutions will meet their part of the obligation by providing the necessary financial, technical and other assistance.

75. It will be necessary to explore further what should be the appropriate mechanism to work out the arrangements for the compact. The international financial community has had several experiences of working out such mutually negotiated plans of action with individual countries facing specific problems. In the late 1980s the IMF experimented with an approach in dealing with highly indebted developing countries that fell into arrears in meeting their repayment obligations. A group of donor countries was formed as a support group for the country concerned with the help of the international financial agencies, such as the World Bank, the regional development banks and the IMF, to work out programmes of reforms and adjustment, according to which if the concerned developing country followed all the steps as agreed, the international community would guarantee to provide the necessary resources. The difference between this and other conventional arrangements of the IMF and the World Bank was in the scope of the dialogue between the developing and the donor countries during the process of implementing the programme and which allowed the introduction of changes in the programme if necessary to make the process fully participatory.

76. It is possible to think of a model similar to the suggested group concept to help work out these arrangements: a standing group of representatives of DAC, representing the donors; the IMF, the World Bank and the regional development bank of the country concerned representing the financial institutions; representatives of FAO, WHO and UNICEF concerned with the areas of the three rights, food, primary health care and primary education; and a representative of the Commission on Human Rights to examine the programme from the human rights perspective could meet to negotiate and work out, with a country willing to accept the obligation to fulfil the rights, a plan of action to realize the rights to food, primary health care and primary education in a well-defined sequence within a stipulated time. Then an agreement can be reached between the State committing itself to

implement the programme, in full and according to the plan, and the international community to provide international support. This need not be the only model of such a mechanism and it would be necessary to explore what would be most feasible and acceptable. Once the idea of the compact is accepted, it should not be difficult to reach an agreement about the most desirable mechanism to work it out in practice.

Complementary policies and actions at the national level

77. It must be reiterated that making these three rights non-derogable, or the minimum that will have to be satisfied, does not mean that the other elements of the right to development, including civil and political rights, can be violated or ignored. One way to ensure that would be to follow "the rights approach" as described above in implementing them with transparency, accountability and participation. In addition, positive steps must be taken to protect all the rights and freedoms. Indeed, all signatories to the Declaration have the moral obligation to do everything possible to help realize all the elements of the right to development as a human right. At a minimum, as they accept the treaty obligation to realize the three basic rights, they should at least make sure that there is no deterioration with respect to the other elements of the rights related to the right to development.

78. While this programme of realizing the three minimal rights as a development compact has been proposed as a form of international cooperation in a step-by-step approach, it should not be taken as underplaying the paramount importance of action at the national level. As the Declaration on the Right to Development makes clear and the Vienna Declaration and Programme of Action reaffirms, the primary responsibility for ensuring the enjoyment of human rights lies with individual States. The series of international conferences held during the 1990s set goals and targets in their programmes for action and measures which States need to take to ensure the realization of the right to development.

79. It would also be necessary for States parties to follow policies of growth and development which would complement the policies to implement the individual rights, including the three identified above. Among those complementary policies the most important would be taking steps to remove poverty, by national and international action. By bringing up the people below the poverty line to a level above it, without pushing anyone else below that line, the total well-being of the population will increase, also improving equity, measured by whatever index is appropriate. If there is sustained growth of GDP and there is no worsening of the distribution of income, overall per capita consumption should improve, and thus reduce the overall level of poverty. But if the growth of GDP is not sustained, or if the distribution of income and expenditure worsen, an increase in per capita GDP may not lead to a reduction of poverty.

80. Therefore, measures have to be taken to prevent the worsening of income distribution when the average income is growing or to ensure that income growth is not accompanied by a decline in other non-income indicators of well-being such as health, nutrition or education. In other words, policies

for realizing the right to development with respect to any specific rights such as to food, primary health care and primary education, must be accompanied by well-designed programmes for growth and development, specifically targeted to the poor (i.e., those who live below the poverty line), whether through public distribution or through special employment programmes or other social development schemes that improve the capabilities of the poor. It is only against the background of these policies that it will be possible to carry out the implementation of the right to development. The programme for realizing this right cannot be formulated and implemented without such basic programmes for growth and development.

IV. CONCLUSION AND THE FOLLOW-UP PROGRAMME

81. The independent expert has a mandate for three years during which he is expected to explore and develop the programme for realizing the right to development. In this report he presents the preliminary ideas about his approach, all the elements of which will have to be explored carefully in consultation with the representatives of the different agencies, institutions, Governments and non-governmental organizations, as well as academics and experts. He has suggested a framework for operationalizing the right to development, trying to clarify what are the essential characteristics of a rights approach to development which must be secured in any programme of action. He has then tried to build up a model for realizing the right to development, step by step, starting first with three rights, to food, to primary health care and to primary education, combining international cooperation with the national obligations of States. This can then be generalized and developed to encompass other elements of the right to development, fully and comprehensively, over a period.

82. There has to be a consultation with the Working Group about whether in this initial stage it would be enough to concentrate on these three rights or whether others should be included. It should of course be noted that realizing these three rights cannot allow any of the other human rights to be violated as that will go against the very spirit of the right to development. Indeed, there has to be at least a stand-still arrangement with respect to other human rights to prevent any deterioration in their observance. In working out the resource requirements for fulfilling these rights, adequate account has to be taken of providing for maintaining at least the stand-still arrangements. In the case of the programme for removing poverty, adequate provisions should be made for ensuring some anti-poverty programmes, with policies for stimulating the growth that would be necessary, as mentioned above, to provide the essentially required background for realizing the three basic rights. But it may not be possible to extend this list of programmes too much, because of the essential constraint of resources, not only financial, but also physical, technical and organizational. Even if the rights approach may not be very costly financially it may claim very substantial amounts of organizational and technical resources.

83. Regarding these three basic rights, it may be necessary to spell out the elements of the rights approach in greater detail, especially regarding the participation and the equitable distribution of benefits. In actual practice, when the programmes are worked out on the ground, these characteristics would

vary from country to country. Nevertheless, outlines of these approaches with respect to specific rights will have to be worked out more systematically, considering the views of the parties concerned. The independent expert will explore further the different aspects of these rights, with the special rapporteurs, as well as with the World Bank, the regional banks and the specialized agencies.

84. On international cooperation, the idea of a compact is only one model; the practical feasibility of that idea, as well as other alternatives, will have to be examined in further details. The Development Assistance Committee of the OECD and the bilateral donor agencies have brought out their approaches to development cooperation, which are very consistent with the approach of the independent expert. The 1996 DAC study Shaping the 21st Century: The Contribution of Development Cooperation; the 1997 Swedish International Development Authority study, Development Cooperation in the 21st Century; the 1997 White Paper by the United Kingdom Secretary of State for International Development, Eliminating World Poverty: A Challenge for the 21st Century, and the World Bank policy research report, Assessing Aid, all spelt out the essential ingredients on which the approach of a development compact proposed by the independent expert can be built. The independent expert will explore that approach in consultation with these agencies.

85. Just as international cooperation can be used to build up programmes for realizing the right to development, it can also be effective in preventing the deterioration in the enjoyment of this right in developing countries facing financial or other crises. It would be important to examine this issue with some case studies, in order to develop a comprehensive approach to development cooperation.

86. Once this approach is properly developed, it may be useful to think of a forum for discussion under the auspices of the Commission on Human Rights, where a group of representative Governments could discuss with international financial institutions and aid agencies or the DAC and concerned developing countries about the problems encountered in the process of realizing the right to development and possible measures that could be adopted to overcome them. Since the Declaration on the Right to Development is not a covenant, this forum cannot have the status of a treaty body and its recommendations will not have legal basis. But the aim is to develop an approach based on consensus, for which such open-ended discussions could be extremely helpful.

Table 1

ODA performance of DAC countries

	Per cent of GNP								
	1975-76	1985-86	1986/90 average	1991	1992	1993	1994	1995	1996
Australia	0.53	0.47	0.39	0.38	0.37	0.35	0.34	0.36	0.30
Austria	0.17	0.28	0.22	0.34	0.30	0.30	0.33	0.33	0.24
Belgium	0.55	0.51	0.45	0.41	0.39	0.39	0.32	0.38	0.34
Canada	0.49	0.49	0.46	0.45	0.46	0.45	0.43	0.38	0.32
Denmark	0.53	0.85	0.91	0.96	1.02	1.03	1.03	0.96	1.04
Finland	0.17	0.43	0.58	0.80	0.64	0.45	0.31	0.32	0.34
France	0.42	0.58	0.59	0.62	0.63	0.63	0.64	0.55	0.48
Germany	0.38	0.45	0.41	0.40	0.38	0.36	0.34	0.31	0.33
Ireland	0.10	0.27	0.20	0.19	0.16	0.20	0.25	0.29	0.31
Italy	0.11	0.34	0.37	0.30	0.34	0.31	0.27	0.15	0.20
Japan	0.21	0.29	0.31	0.32	0.30	0.27	0.29	0.28	0.20
Luxembourg	-	0.17	0.19	0.33	0.26	0.35	0.40	0.36	0.44
Netherlands	0.77	0.97	0.96	0.88	0.86	0.82	0.76	0.81	0.81
New Zealand	0.47	0.28	0.25	0.25	0.26	0.25	0.24	0.23	0.21
Norway	0.68	1.10	1.12	1.13	1.16	1.01	1.05	0.87	0.85
Portugal	-	0.06	0.19	0.30	0.35	0.28	0.34	0.25	0.21
Spain	-	0.09	0.13	0.24	0.27	0.28	0.28	0.24	0.22
Sweden	0.78	0.85	0.90	0.90	1.03	0.99	0.96	0.77	0.84
Switzerland	0.19	0.30	0.31	0.36	0.45	0.33	0.36	0.34	0.34
United Kingdom	0.39	0.32	0.30	0.32	0.31	0.31	0.31	0.29	0.27
United States	0.26	0.23	0.20	0.20	0.20	0.15	0.14	0.10	0.12
TOTAL DAC	0.32	0.33	0.33	0.33	0.33	0.30	0.30	0.27	0.25
of which:									
EU members	0.40	0.45	0.45	0.45	0.45	0.44	0.42	0.38	0.37

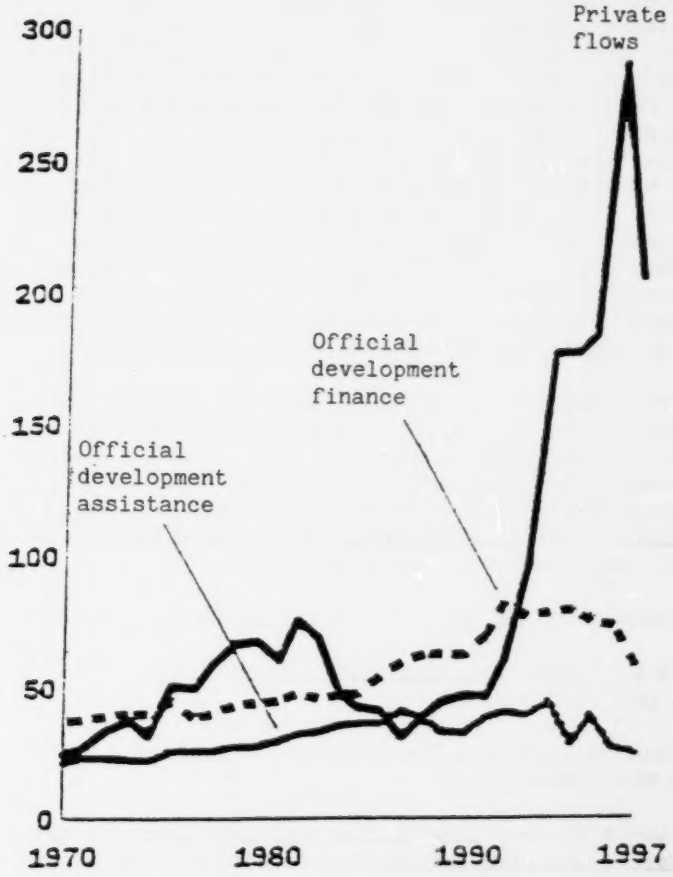
Table 2

Long-term trend in DAC ODA

	Volume of net ODA ($ million at 1995 prices and exchange rates)			ODA per capita of donor country 1995 dollars	
	1975-76	1985-86	1995-96	1985/86	1995/96
Australia	903	1 169	1 118	73	62
Austria	246	543	670	72	83
Belgium	1 033	1 137	989	115	98
Canada	1 611	2 154	1 914	85	64
Denmark	618	1 187	1 708	232	325
Finland	141	470	406	96	79
France	4 278	7 333	7 977	132	137
Germany	5 258	7 663	7 709	99	94
Ireland	25	84	165	24	46
Italy	659	2 971	1 906	52	33
Japan	5 452	10 817	12 702	89	101
Luxembourg	-	26	75	136	185
Netherlands	1 888	2 916	3 296	201	213
New Zealand	188	124	118	38	33
Norway	486	1 138	1 263	274	289
Portugal	-	42	236	9	24
Spain	-	404	1 287	21	33
Sweden	1 358	1 704	1 783	204	201
Switzerland	435	850	1 078	130	152
United Kingdom	2 883	2 887	3 174	51	54
United States	10 551	12 642	8 282	53	31
TOTAL DAC	38 013	58 262	57 856	79	71
of which:					
EU members	18 387	29 368	31 381	-	-

After peaking in 1991, aid has fallen.

Figure 1. Financial flows to developing countries



Source: Global Development Finance 1998.

Notes

1/ The independent expert has benefited from the research assistance provided by the NGO, Rights and Humanity and the comments of its President, Ms. Julia Hausserman, and of Professor Nico Schrijver of the Institute of Social Studies, The Hague.

2/ The American Declaration of Independence (1776), which was probably the first clear enumeration of the principles of human rights, squarely put this point stating: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, its the Right of the People to alter or to abolish it ..." . Even at that time it was recognized that the list of rights would expand with changed circumstances. In 1791, the United States adopted the first ten amendments to its Constitution of 1789, known as the Bill of Rights, containing a list of guaranteed human rights beyond those of life, liberty and the pursuit of happines. This list was expanded by a number of subsequent amendments, the adoption of each of which was preceded by intense debate and discussion regarding their worth and implications. But the sanction, behind their recognition as rights, was their acceptance by the people through due process.

3/ This issue has been dealt with extensively in the deliberations of the Committee on Economic, Social and Cultural Rights and its general comments (for example, General Comment No. 3 of 1990 (E/1991/23, annex III). See also Julia Hausserman, "The realization and implementation of Economic, Social and Cultural Rights" and Michael K. Addo, "Justiciability Re-examined" in Economic, Social and Cultural Rights: Progress and Achievement, Ralph Beddard and Dilip M. Hill (eds); London, Macmillan, 1992).

4/ John Rawls, A Theory of Justice, Harvard University Press, 1971.

5/ W.A. Lewis, The Theory of Economic Growth, London, Allen and Unwin, 1955, pp. 9-10, 420-421.

6/ See Amartya Sen, "Development as Freedom", the First Presidential Lecture, The World Bank, 1997.

7/ See A.K. Sen, Commodities and Capabilities, North Holland, 1995, Resources, Values and Development, Harvard University Press, 1984.

8/ Charles Taylor, "Human Rights, The Legal Culture", in Philosophical Foundation of Human Rights, UNESCO, 1986 and Karel Vasak, Third Generation of Human Rights - The Rights of Solidarity, International Institute of Human Rights, 1975.

9/ There is a prevalent opinion that it is counter-productive to plead for increased foreign aid because the OECD countries have developed "aid fatigue" over time. The independent expert does not find much evidence of aid fatigue in the records of ODA performance of DAC countries (tables 1 and 2

and chart). ODA as a percentage of GNP of the OECD countries never reached 0.7 per cent, but it hovered around 0.32/0.33 per cent consistently for more than 15 years until about 1992. Even the United States, whose ODA share of GNP was always much smaller than that of other DAC countries, maintained relative stability in that share until 1992, after which it fell rather steadily. Since the absolute volume of the United States aid was very large, it dominated the overall share of the OECD countries, though quite a number of them maintained much larger percentage shares of ODA to GNP throughout the period. After 1993, these shares fell for all major DAC countries, but that could be explained more by the internal conditions of their economies and other factors than by aid fatigue. The value of net ODA, in real terms at 1995 prices, was significantly higher even in 1995/96, compared to 1985/86, for major donor countries like Japan, France, Germany, the Netherlands and even the United Kingdom. The trend was similar in the case of ODA, in 1995 dollars, in per capita terms. Only in the United States was the decline in ODA, both in absolute and in per capita terms, unequivocal. But this did not mean that the United States had lost interest in cooperating with the developing countries through resource transfers. The amount of assistance in dollar terms from the United States continues to be very large, the second largest after Japan in recent years; and the way the United States mobilized large support for countries facing a crisis, whether in Latin America or in East Asia, indicates its willingness to cooperate with these countries when it is convinced of the usefulness of such cooperation.

10/ T. Stoltenberg: "Towards a World Development Strategy" in One World or Several, Louis Emmerij ed., OECD, Paris, 1989. Stoltenberg talked about development contracts as comprehensive long-term commitments by industrial countries for development assistance to implement long-term development plans of the third world countries. This was taken up by others at the OECD Development Centre, when it was suggested that a Development Commission be formed to conduct continued dialogue between developing and industrial countries. The idea of a Development Compact is less ambitious and more linked to an understanding or an agreement between a developing country undertaking programmes of adjustment and reform and a group of industrial countries which would ensure the provision of necessary assistance to implement the programmes. The logic of reciprocal obligation was spelled out in the report of the IMF Group of 24, "The Functioning and Improvement of the International Monetary System", IMF Survey, September 1985, and developed by Arjun Sengupta in "Multilateral Compacts Supporting Economic Reforms", part of the companion volume to The Challenge to the South: The Report of the South Commission (1990), and in the UNDP Human Development Report, 1992.

11/ The existence of non-derogable rights is recognized in the International Covenant on Civil and Political Rights (1966) whose article 4 permits derogation from the obligations of the Covenant during emergencies, but declares certain rights as non-derogable such as the right to life, the right to be protected from torture and the right to freedom of thought.